

## THE LEGALITY OF HUMAN STERILIZATION IN NORTH CAROLINA

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Some physicians in North Carolina seem to be of the opinion that human sterilization may be illegal. A review of the law on the subject may help to clarify this point.

There are two sorts of sterilization insofar as the patient is concerned—voluntary and involuntary. The only statute law in the state specifically referring to the matter appears to be an act of 1933 (c. 224). This act has been of enough interest to the legislature to warrant slight amendments in 1935, 1937, 1945, and 1947. The material is collected in *General Statutes of North Carolina 1943*, Chapters 35 and 36. It does not appear that the constitutionality of this act has been presented squarely to the courts. A previous act of 1929 was held unconstitutional in the case of *Brewer v. Valk* (204 N. C. 186) on the ground that it did not provide for giving notice and a hearing to a person ordered to be sterilized, and did not afford him the right to appeal to the courts. This defect was the occasion for the passage of the 1933 act, in which it was remedied.

### *Involuntary Sterilization*

The present law relates to involuntary sterilization of mental defectives both inside and outside state institutions. It provides that proceedings may be started by the head of any penal or charitable institution of the state, by the superintendent of public welfare of a county, or by the next of kin or the legal guardian of the patient. A petition is presented to the Eugenics Board of North Carolina, which is composed of "The Commissioner of Public Welfare of North Carolina, the Secretary of the State Board of Health of North Carolina, the chief medical officer of an institution for the feeble-minded or insane of the state of North Carolina, not located in Raleigh, the chief medical officer of the State Hospital at Raleigh, the Attorney General of the state of North Carolina."

Proceedings shall be begun when the head of an institution or a county superintendent believes that sterilization of a mentally diseased, feeble-minded or epileptic person is "for the best interest of the mental, moral, or physical improvement of the patient," or "for the public good," or is needed to prevent the probable procreation "of a child or children who would have a tendency to serious physical, mental or nervous disease or deficiency." The next of kin or legal guardian may also make a written request for sterilization of such a patient.

If the Eugenics Board is satisfied that one or more of the above named reasons exists, it may order "an operation of asexualization or sterilization." Notice of this order must be delivered "by registered mail, return receipt demanded, to all parties in the case, including the legal guardian, the solicitor and the next of kin of the inmate, patient or individual resident."

The patient or someone in his behalf "may within fifteen days from the date of such order have an appeal of right to the Superior Court." "Upon such appeal the said Superior Court may affirm, revise, or reverse the orders of the said board appealed from and may enter such order as it deems just and right and which it shall certify to said board." "Any party to such appeal to the superior court may within ten days after the date of the first order therein, apply for an appeal to the Supreme Court. . . ."

Two provisions of the act are of particular interest to physicians:

Section 16: "Neither the said petitioner nor any other person legally participating in the execution of the provisions of this article shall be liable, either civilly or criminally, on account of such participation, except in case of negligence in the performance of said operation."

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